IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 37175 of 2003(A)

PETITIONER:

A.P.BHASKARAN, S/O. APPU,
A.P.B.NIVAS, CHERIYA PERINGALAM,
P.O. KUNNAMANGALAM, KOZHIKODE DISTRICT.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS:
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1. **PERUVAYAL GRAMA PANCHAYATH,**
REPRESENTED BY ITS SECRETARY,P.O. POOVATTUPARAMBA,
PERUVAYAL, KOZHIKODE DISTRICT.

2. **K.A.SUMATHI AMMA, D/O. KRISHNAN NAIR,**
"SREEKRISHNALAYAM", PERUVAYAL VILLAGE,
PERINGALAM P.O., KUNNAMANGALAM, KOZHIKODE DIST.

3. **SREEKANTH, S/O. T.HARIDAS,**
"SREEKRISHNALAYAM", PERUVAYAL VILLAGE,
PERINGALAM, P.O. KUNNAMANGALAM, KOZHIKODE DIST.

4. **THE ASSISTANT ENVIRONMENTAL ENGINEER,**
KERALA STATE POLLUTION CONTROL BOARD,
HOUSING BOARD OFFICE COMPLEX, P.O. ERANJIPALAM,
CALICUT-6.

BY ADV. SRI.M.A.MANHU
SRI.BABU JOSEPH KURUVATHAZHA,SC,POLU.C.
SRI.WILSON URMESE
SRI.M.K.CHANDRAMOHAN DAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.37175/2003

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE NO- OBJECTION CERTIFICATE ISSUED FROM THE DISTRICT MEDICAL OFFICE, KOZHIKODE DT. 13.8.86.

EXT.P2:- COPY OF THE BUILDING PERMIT GRANTED BY THE 1ST RESPONDENT TO THE PETITIONER DT. 24.4.86.

EXT.P3:- COPY OF THE JUDGMENT DT. 17.7.87 IN OP. 9290/86 OF THIS HONOURABLE COURT.

EXT.P4:- COPY OF THE 1ST LICENSE ISSUED BY THE R1 DT. 18.1.91 TO THE PETITIONER.

EXT.P5:- COPY OF THE COMMON JUDGMENT IN OS. NO.855/87. 124/91 & 383/91 OF THE MUNSIFF'S COURT, KOZHIKODE – II, DT. 21.12.96.

EXT.P6:- COPY OF THE COMMON JUDGMENT IN SA. NO.47/91 & OP. NO.5332/91 OF THIS HONOURABLE COURT DT. 24.10.2000.

EXT.P7:- COPY OF THE LICENCE ISSUED BY THE 1ST RESPONDENT FOR THE YEARS 01-01, 01-02, 02-03.

EXT.P8:- COPY OF THE JUDGMENT IN WA. NO.3221/2000 DT. 8.7.02 OF THIS HONOURABLE COURT.

EXT.P9:- COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT DT. 6.2.03 TO THE PETITIONER.

EXT.P10:- COPY OF THE REPLY SUBMITTED BY THE PETITIONER TO THE 54TH RESPONDENT DT. 24.2.03.

EXT.P11:- COPY OF THE LETTER DT. 2.9.03 SENT BY R4 TO THE PETITIONER.

EXT.P12:- COPY OF THE DEMAND DRAFT TAKEN IN THE NAME OF THE MEMBER-SECRETARY OF THE 4TH RESPONDENT.

EXT.P13:- COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DT. 17.2.03.

EXT.P14:- COPY OF THE APPLICATION DT. 19.3.03 SUBMITTED BY THE PETITIONER BEFORE THE R1.

EXT.P15:- COPY OF THE CHEQUE DRAWN IN FAVOUR OF THE 11TH RESPONDENT.

EXT.P16:- COPY OF THE POSTAL ACKNOWLEDGEMENT FOR SENDING EXT.P14 AND P15.

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EXT.P17:- COPY OF THE COMMUNICATION DT. 9.10.03 SENT BY THE OFFICE OF THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P18:- COPY OF THE REPLY TO EXT.P17 SENT BY THE PETITIONER'S COUNSEL TO THE 1ST RESPONDENT DT. 23.10.03.

EXT.P19:- COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE POSTAL INSPECTOR, KUNNAMANGALAM DT. 25.10.03.

EXT.P20:- COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT DT. 10.11.03.

EXT.P21:- COPY OF THE REPLY SENT BY THE PETITIONER TO THE 1ST RESPONDENT DT. 18.11.03.

EXT.P22:- SERIES:- PHOTOGRAPHS.

EXT.P23:- COPY OF THE COVERING LETTER DT. 28.11.03 SENT BY THE PETITIONER TO THE R4 ASST. ENVIRONMENTAL ENGINEER.

EXT.P24:- COPY OF THE LETTER DT. 9.12.03 SENT BY THE PETITIONER TO THE CHIEF ENVIRONMENTAL ENGINEER THE KERALA STATE POLLUTION CONTROL BOARD (R4)

EXT.P25:- COPY OF THE NOTICE DT. 21.10.03 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.

EXT.P26:- COPY OF THE COVERING LETTER SENT BY THE PETITIONER TO THE 4TH RESPONDENT D.T 20.12.03.

EXT.P27:- COPY OF THE LETTER NO.PCB/KKD/A/101/2003 DT. 10.12.03 SENT BY THE MEMBER SECRETARY OF THE KERALA STATE POLLUTION CONTROL BOARD TO THE PETITIONER.

EXT.P27(a):- COPY OF THE POSTAL COVER IN WHICH THE PETITIONER RECEIVED EXT.P27.

EXT.P28:- COPY OF THE LETTER SENT BY PETITIONER TO THE MEMBER SECRETARY OF THE BOARD ON 29.12.03 (DATE WRONGLY SHOWN AS 29.10.03.)

EXT.P29:- COPY OF THE REGD. COVER UN- OPENED SENT BY PETITIONER TO R4.

EXT.P30: - COPY OF THE CERTIFICATE OF POSTING FOR SENDING THE COPY OF THE ORDER OF THIS HONOURABLE COURT ON 30.12.03.

EXT.P31:- COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE JUDICIAL MAGISTRATE OF THE 1ST CLASS, KUNNAMANGALAM.

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RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE LETTER DT. 11.3.03.

EXT.R1(b):- COPY OF THE LETTER DT. 26.3.04.

EXT.R1(c):- COPY OF THE LETTER DT. 15.9.03.

EXT.R2(a):- COPY OF THE INTERIM ORDER O INJUNCTION ISSUED BY THE COURT OF THE MUNSIFF OF KOZHIKODE- II IN IA. NBO.5328/87 IN OS. NO855/87.

EXT.R2(b):- COPY OF THE REPLY NOTICE DT. 145.3.91 ISSUED BY THE EXECUTIVE OFFICER , PERINGALAM PANCHAYATH, IST RESPONDENT TO K.A.SUMATHI AMMA, R2 AND PRODUCED AS EXT.A14 IN OS. NO.855/87.

EXT.R4(a):- COPY OF THE LETTER BEARING NO.PCB/L/WPC NO.37175/03 DT. 23.2.04 SENT BY THE REGIONAL OFFICE OF THE KERALA STATE POLLUTION CONTROL BOARD, KOZHIKODE TO THE PETITIONER.

/TRUE COPY/

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KURIAN JOSEPH, J.

W.P.(C). NO. 37175 OF 2003 &
W.P.(C). NO. 37381 OF 2004

Dated this the 6th day of June, 2007.

J U D G M E N T

The subject matter of both writ petitions pertains to the alleged pollution caused by the writ petitioner in the former writ petition in running a saw mill. The said writ petitioner has been running the saw mill for the last more than two decades. There is serious dispute on that by the writ petitioner in the latter writ petition.

2. Be that as it may, it is seen that the Appellate Authority has passed Exhibit P8 judgment setting aside the order dated 11.03.2004 passed by the Pollution Control Board refusing consent to operate the saw mill and has remitted the matter for fresh consideration. After having extensively heard the parties, I am of the view that the interest of all the parties can be safeguarded, if the Pollution Control Board is directed to pass fresh orders pursuant to Exhibit P8 in W.P.(C). No. 37381/2004 with notice to all the parties, untramelled by the observations therein. Accordingly, these writ petitions are disposed of with the following directions.

1) There will be a direction to the Kerala State Pollution Control Board to consider the issue afresh and pass orders, untramelled by the observation in Ext. P8 in W.P.(C).No.37381/04, with notice to the parties to the writ petitions including the Grama Panchayath.

2) There will also be a direction to a competent officer under the Pollution Control Board to conduct a site inspection with notice to both the writ petitioners and the Grama Panchayath before passing orders as above.

3) Depending on the order thus passed by the Kerala State Pollution Control Board, the required orders will be passed by the Grama Panchayath.

4) The writ petitioner in W.P.(C). No. 37381/2004 will also be afforded sufficient opportunity while considering the application by the Panchayath for the renewal of licence, if it requires such consideration based on the order by the Pollution Control Board.

5) The orders as above shall be passed by the Pollution Control Board within a period of four months from the date of receipt of a copy of this judgment. Consequential orders,

if required, will be passed by the Grama Panchayath within a period of another two months.

6) It is made clear that in case the petitioner in W.P.(C). No. 37175/2003 provides for the remedial measures for abatement of pollution as directed by the Pollution Control Board, renewal shall not be refused since the refusal to renew the licence is only on the ground of non-compliance of the directions issued by the Pollution Control Board. Until orders are passed as above by the Pollution Control Board and Grama Panchayath, interim order passed by this Court in W.P.(C).No. 37175/2003 will continue. The functioning of the saw mill shall not be disturbed since it is said to be functioning as per the directions issued by this Court in W.P.(C). No. 15700/2004, till orders as above are passed.

These writ petitions are disposed of as above.

KURIAN JOSEPH, JUDGE.

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